



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.1.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

AND

THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).Nos.86 & 87 of 2002

M/s. Grand Bazzar
85A, Cross Cut Road
Coimbatore.

Appellant in
.. both appeals

Vs.

The Assistant Commissioner of Income Tax
Special Investigation Circle
Coimbatore.

Respondent in
.. both appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 26.6.2001 in ITA Nos.462 & 463/91 for the assessment year 1981-82 and 1984-85 respectively against order in ITA.No.613-C/90-91/and 618/C/90-91 respectively dated 28.12.1990 of the Commissioner of Income Tax (Appeals) Coimbatore and the Assessment order dated 24.09.1990 in PAN.GIR.No.FQ-7413/SIC/II/CBE of the Assistant Commissioner of Income Tax, Special Investigation Circle II, Coimbatore respectively.

For Appellant : Mr.C.V.Rajan
For Respondent : Mr.T.Ravikumar

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal in ITA Nos.462 & 463/91 dated 26.6.2001.

2.1. The appellant/assessee is a partnership firm doing the business of selling garments. For the assessment years 1981-82 and 1984-85, the assessee filed its returns on 28.12.1983 and 28.2.1985 respectively. The Assessing Officer completed the assessments under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The said assessments were set aside by the Commissioner of Income tax under section 263 of the Act with a direction to consider the entire cash



credits appearing in the books of account as undisclosed income of the assessee under Section 68 of the Act. On appeal, the Tribunal directed the assessing officer to make a thorough investigation and arrive at the undisclosed income after considering the growth of wealth.

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2.2. Afterwards, considering the credits in the books of account, the Assessing Officer determined the total income for the assessment years 1981-82 and 1984-85 at Rs.2,41,020/- and Rs.8,02,320/- respectively. When the assessee was required to prove the genuineness of the credits, the assessee admitted that the credits were nothing but suppressed sales. Ultimately, the Assessing Officer made addition of Rs.1,66,825/- and Rs.5,08,031/- respectively for the assessment years 1981-82 and 1984-85 as income from other sources under section 69C of the Act.

2.3. On appeal, the Commissioner of Income-tax (Appeals) held that in respect of assessment year 1981-82, the assessing officer was not correct in adding a sum of Rs.1,66,825/- since all the purchases were not made on a single day and it would be reasonable to consider only Rs.20,000/- as the unexplained purchases outside the books of account on the ground that the amount used in the first purchase could have been rolled over for the purchases on subsequent days. Accordingly, the Commissioner of Income-tax (Appeals) sustained the addition of Rs.20,000/- as against Rs.1,66,825/-. For the assessment year 1984-85, the Commissioner of Income-tax (Appeals) found that since the transactions were taking place outside the accounts right from the assessment year 1981-82 and additions had been made in the earlier years, it would not be necessary to estimate anything towards possible capital utilised outside the accounts during the year as against the undisclosed purchases. Considering the addition sustained at Rs.1,60,000/- during the assessment year 1984-85, the additions made in the earlier years, the peak credit position even as on 30.11.1985, the absence of any accretion to wealth in excess of the additional income offered for assessments or determined finally and other relevant circumstances, the Commissioner of Income-tax (Appeals) deleted the entire addition of Rs.5,08,081/-.

2.4. On appeals, at the instance of the Revenue, the Tribunal held that the assessee had introduced the suppressed sales (Rs.20,000/- being the expenditure on the first purchase for the assessment year 1981-82 and gross profit of Rs.1,60,000/- for the assessment year 1984-85) in the regular books of account as cash credit which means that the funds introduced as credits in the books had gone into the assessee's business account and so, the same could not have been utilised for making the unaccounted purchases and the assessee could not be given credit to any amount already introduced as credits in the account books as available to meet any unaccounted expenditure including the unaccounted purchases. Accordingly, the Tribunal restored the addition of Rs.1,66,825/- for the assessment year 1981-82. In so far as the assessment year 1984-85 is concerned, the Tribunal sustained the addition to the extent of Rs.2,83,982/-.



2.5. As regards the estimation of gross profit, for the assessment year 1984-85, the assessing officer adopted 25% whereas the Commissioner of Income-tax (Appeals) reduced it to 20%. The Tribunal found that the question whether the gross profit estimated at 20% or 25% would not make any difference in the overall addition and ultimately estimated the gross profit at 25% as reasonable in the circumstances of the case.

2.6. Aggrieved by the order of the Tribunal, the assessee has preferred these appeals raising the following common substantial questions of law:

- (a) Whether on the facts and in the circumstances of the case, the Tribunal was right in sustaining the action of the respondent herein by making an addition in terms of Section 69C of the Act?
- (b) Whether on the facts and in the circumstances of the case, the Tribunal was right in sustaining the gross profit without indicating any basis or reasons in the order appealed against?

3. In the instant case, admittedly, there were certain cash credits appearing in the assessee's books of account which were found to be bogus credits. The assessee also, by letter dated 24.9.1990, admitted that the credits were nothing but the suppressed sales. The assessing officer estimated the gross profit on the suppressed sales and made additions. The assessing officer, while estimating the gross profit, considered the difference as cost of purchases and since the source for unaccounted purchases remained unexplained, the assessing officer made additions under section 69C of the Act.

4.1. Before proceeding further, it would be apposite to refer Section 69C of the Act which reads as follows:

"69C. Unexplained expenditure, etc.: Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof as the case may be, may be deemed to be the income of the assessee for such financial year:

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."

4.2. A bare reading of the above section makes it clear that if the assessee incurred any expenditure, but offered no explanation about the source of such expenditure or part thereof, or the explanation so offered



is not satisfactory, such expenditure may be deemed to be the income of the assessee. In the case on hand, therefore, the additions were made under section 69C of the Act, as the assessee had no explanation regarding the source of funds for the purchases.

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5.1. Learned counsel appearing for the assessee submits that the findings of the Commissioner of Income-tax (Appeals) have to be sustained as the Commissioner of Income-tax (Appeals) proceeded on reasonable basis in arriving at the amounts of addition towards undisclosed purchases. On the other hand, learned counsel appearing for the Revenue sought to sustain the order of the Appellate Tribunal.

5.2. The Commissioner of Income-tax (Appeals), taking into consideration the acceptance of the assessing officer that the actual cash credits were only suppressed sales and such sales had come from undisclosed purchases, found that the expenditure on the unaccounted purchases could be Rs.20,000/- for the assessment year 1981-82 on the basis that with the first purchase making use of Rs.20,000/- the assessee could have made some sales and then, the sale proceeds could be utilised for the subsequent purchases and thus, funds could be rolled over for the purchases totalling Rs.1,66,825/-. For the assessment year 1984-85, the Commissioner of Income-tax (Appeals) found that there was a separate addition of Rs.1,60,000/- representing the gross profit which could be rolled over for the purchases. On that basis, the Commissioner of Income-tax (Appeals) made an addition of Rs.20,000/- for the assessment year 1981-82 and deleted the addition for the assessment year 1984-85, under section 69C of the Act.

5.3. In the present case, the assessee had not explained as to the source of purchases and the additions under section 69C of the Act are, therefore, sustainable. Further, the Commissioner of Income-tax (Appeals) is not justified in reducing/deleting the additions. As rightly observed by the Tribunal, the funds introduced by the assessee as cash credits in the books of account had gone into the assessee's business account and so, the same could not have been utilised for making the unaccounted purchases and the assessee could not be given credit to any amount already introduced as credits in the account books as available to meet any unaccounted expenditure including the unaccounted purchases. We are, therefore, of the opinion that the Tribunal was justified in restoring the additions under section 69C of the Act for both the assessment years.

5.4. That apart, the Tribunal estimated the gross profit at 25% instead of 20% as adopted by the Commissioner of Income-tax (Appeals). The Tribunal recorded a finding that whether the gross profit estimated at 20% or 25% would not make any difference in the overall addition and estimated the gross profit at 25% as reasonable, in the circumstances of the case. We are of the view that the gross profit estimated at 25% by the Tribunal is a finding of fact and we are not inclined to render any finding on the same.



5.5. In this view of the matter, we hold that the addition made by the Tribunal under section 69C of the Act is sustainable and that the Tribunal estimated the gross profit at 25% in the circumstances of the case, and accordingly, we answer both the questions in the affirmative and against the Revenue. The tax case appeals stand dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kpl

To

1. The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Madras.

2. The Commissioner of Income Tax (Appeals)
Coimbatore.

3. The Assistant Commissioner of Income Tax
Special Investigation Circle II,
Coimbatore.

1 cc To Mr.C.V.Rajan, Advocate, SR.3909.

2 cc To Mr.N.Muralikumaran, Advocate, SR.4097, 4098.

TC (A) Nos.86 & 87 of 2002.

SSV(CO)
RVL 16.02.2007